

**BREINER CONSTRUCTION
COMPANY, INC.****CONTRACT NO. V554C-762****VABCA-5461****VA MEDICAL CENTER
DENVER COLORADO**

Rosemary Breiner, President, Breiner Construction Company, Inc., Denver, Colorado, for the Appellant.

Charlma O. Jones, Esq., Deputy Assistant General Counsel; and *Phillipa L. Anderson, Esq.*, Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

OPINION BY ADMINISTRATIVE JUDGE McMICHAEL

Breiner Construction Company, Inc. (Breiner or Contractor) seeks delay and impact costs resulting from a contract with the Department of Veterans Affairs (VA or Government) to correct "AAALAC Deficiencies" at the VA Medical Center in Denver, Colorado. Breiner sought to recover these costs by lodging an Appeal with this Board dated November 20, 1997. The Board in docketing the Appeal on November 28, 1997 noted that it did not appear from the documents furnished to it that Breiner had ever submitted its claim for costs to the Contracting Officer for decision. As a result we issued an Order to Show Cause to the Contractor why the Appeal should not be dismissed for lack of jurisdiction.

Breiner responded to the Order by informing the Board that upon receipt of the Board's Order it had immediately contacted the VA "requesting a Contracting Officer's final decision." The Contractor asked that any further response be extended in order to permit the VA to consider its claim.

DISCUSSION

The *Contract Disputes Act of 1978* provides the basis for jurisdiction by this Board over any claims made by the Appellant against the Government. Specifically, 41 U.S.C. § 605(a) provides that "[a]ll claims by a contractor against the government relating to a contract shall be in writing and shall be submitted to the contracting officer for a decision." As we held in *Bridgewater Construction Corporation*, VABCA Nos. 2866 et al., 90-2 BCA ¶ 22,764 at 114,264, in order to invoke the jurisdiction of the Board the Contractor must "(1) submit to the Contracting Officer a written demand asserting specific rights and relief; (2) specify the monetary compensation sought; and (3) demand a final decision or certify the claim where necessary, in accordance with the requirements of the CDA." *Accord Reflectone, Inc. v. John H. Dalton*, 60 F.3d 1572 (Fed. Cir. 1995). Once a claim is submitted to the contracting officer, 41 U.S.C. § 605 (c) provides that "[a] contracting officer shall issue a decision on any submitted claim for \$100,000 or less within 60 days from his receipt of a written request from the contractor that a decision be rendered within that period." In the absence of any communication by the contracting officer which might constitute a decision on a contractor's claim, the contractor's claim

is not ripe for adjudication and the Board does not have jurisdiction over the claim.

Paragon Energy Corp. v. United States, 645 F.2d 966, 967 (Ct. Cl. 1981); *White Plains Iron Works, Inc. v. United States*, 229 Ct. Cl. 626 (1981); *AB-Tech Construction, Inc.*, VABCA No. 1531, 82-2 BCA ¶ 15,897 at 78,823-26.

Because no claim has been presented to the Contracting Officer prior to appeal to this Board we are without jurisdiction to consider the matter. Although we understand that a claim is now awaiting a decision by the Contracting Officer, it will be necessary for the Contractor, if dissatisfied with that decision, to appeal that decision pursuant to the options available to it under the *Contract Disputes Act*.

DECISION

For the foregoing reasons, the Appeal is dismissed for lack of jurisdiction pursuant to Board Rule 5.

Date: **December 30, 1997**

Guy H. McMichael III
Chief Administrative Judge
Panel Chairman

We Concur:

Dan R. Anders
Administrative Judge

James K. Robinson
Administrative Judge